

Feb 24, 2020

SEAN F. McAVOY, CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

DANIEL S.,¹

Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,²

Defendant.

No. 1:19-cv-03010-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 14, 15

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 14, 15. The parties consented to proceed before a magistrate judge. ECF No.

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names.

² Andrew M. Saul is now the Commissioner of the Social Security Administration. Accordingly, the Court substitutes Andrew M. Saul as the Defendant. *See* Fed. R. Civ. P. 25(d).

1 5. The Court, having reviewed the administrative record and the parties' briefing,
2 is fully informed. For the reasons discussed below, the Court denies Plaintiff's
3 motion, ECF No. 14, and grants Defendant's motion, ECF No. 15.

4 **JURISDICTION**

5 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§
6 405(g);1383(c)(3).

7 **STANDARD OF REVIEW**

8 A district court's review of a final decision of the Commissioner of Social
9 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
10 limited; the Commissioner's decision will be disturbed "only if it is not supported
11 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
12 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
13 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
14 (quotation and citation omitted). Stated differently, substantial evidence equates to
15 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
16 citation omitted). In determining whether the standard has been satisfied, a
17 reviewing court must consider the entire record as a whole rather than searching
18 for supporting evidence in isolation. *Id.*

19 In reviewing a denial of benefits, a district court may not substitute its
20 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,

1 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
2 rational interpretation, [the court] must uphold the ALJ’s findings if they are
3 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
4 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
5 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
6 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
7 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
8 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
9 *Sanders*, 556 U.S. 396, 409-10 (2009).

10 **FIVE-STEP EVALUATION PROCESS**

11 A claimant must satisfy two conditions to be considered “disabled” within
12 the meaning of the Social Security Act. First, the claimant must be “unable to
13 engage in any substantial gainful activity by reason of any medically determinable
14 physical or mental impairment which can be expected to result in death or which
15 has lasted or can be expected to last for a continuous period of not less than twelve
16 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
17 impairment must be “of such severity that he is not only unable to do his previous
18 work[,] but cannot, considering his age, education, and work experience, engage in
19 any other kind of substantial gainful work which exists in the national economy.”
20 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to
2 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
3 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
4 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
5 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
6 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
7 404.1520(b), 416.920(b).

8 If the claimant is not engaged in substantial gainful activity, the analysis
9 proceeds to step two. At this step, the Commissioner considers the severity of the
10 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
11 claimant suffers from “any impairment or combination of impairments which
12 significantly limits [his or her] physical or mental ability to do basic work
13 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
14 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
15 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
16 §§ 404.1520(c), 416.920(c).

17 At step three, the Commissioner compares the claimant’s impairment to
18 severe impairments recognized by the Commissioner to be so severe as to preclude
19 a person from engaging in substantial gainful activity. 20 C.F.R. §§
20 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more

1 severe than one of the enumerated impairments, the Commissioner must find the
2 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the
4 severity of the enumerated impairments, the Commissioner must pause to assess
5 the claimant's "residual functional capacity." Residual functional capacity (RFC),
6 defined generally as the claimant's ability to perform physical and mental work
7 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
8 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
9 analysis.

10 At step four, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing work that he or she has performed in
12 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
13 If the claimant is capable of performing past relevant work, the Commissioner
14 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).
15 If the claimant is incapable of performing such work, the analysis proceeds to step
16 five.

17 At step five, the Commissioner considers whether, in view of the claimant's
18 RFC, the claimant is capable of performing other work in the national economy.
19 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
20 the Commissioner must also consider vocational factors such as the claimant's age,

1 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
2 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
5 work, analysis concludes with a finding that the claimant is disabled and is
6 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

7 The claimant bears the burden of proof at steps one through four above.
8 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
9 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
10 capable of performing other work; and (2) such work “exists in significant
11 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2);
12 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

13 **ALJ’S FINDINGS**

14 On April 1, 2015, Plaintiff applied for Title II disability insurance benefits.
15 Tr. 107, 201-07. On December 3, 2015, Plaintiff applied for Title XVI
16 supplemental security income benefits. Tr. 208-17. Both applications alleged a
17 disability onset date of March 31, 2015. Tr. 201-17. The applications were denied
18 initially, Tr. 126-32, and on reconsideration. Tr. 135-45. Plaintiff appeared before
19 an administrative law judge (ALJ) on May 19, 2017. Tr. 41-106. On December
20 28, 2017, the ALJ denied Plaintiff’s claims. Tr. 12-33.

At step one of the sequential evaluation process, the ALJ found Plaintiff, who met the insured status requirements through December 31, 2016, had not engaged in substantial gainful activity since March 31, 2015. Tr. 17. At step two, the ALJ found that Plaintiff has the following severe impairments: diabetes mellitus; lumbar degenerative disc disease; bipolar disorder; anxiety disorder; personality disorder; alcohol abuse; and cannabis use disorder. Tr. 17-18. At step three, the ALJ found Plaintiff does not have an impairment or combination of impairments that meets or medically equals the severity of a listed impairment. Tr. 18-19. The ALJ then concluded that Plaintiff has the RFC to perform light work with the following limitations:

He can lift and carry 20 pounds occasionally, lift and carry 10 pounds frequently, stand and/or walk about 6 hours in an 8-hour workday with normal breaks, and sit about 6 hours in an 8-hour workday with normal breaks. He can occasionally stoop, squat, crouch, crawl, kneel, and climb ramps and stairs. He can never climb ropes, ladders, or scaffolds. He is capable of engaging in unskilled, repetitive, routine tasks in 2-hour increments. He is capable of working in proximity to but not in coordination with coworkers and can have occasional contact with supervisors. He cannot have contact with the public. He will be absent from work one time/month and be off task at work up to 10% of the time but can still meet the minimum production requirements of the job.

Tr. 20.

At step four, the ALJ determined that Plaintiff is unable to perform any past relevant work. Tr. 27. At step five, the ALJ found that, considering Plaintiff's

1 age, education, work experience, RFC, and testimony from the vocational expert,
2 there were jobs that existed in significant numbers in the national economy that
3 Plaintiff could perform, such as press operator, mail clerk, and bindery machine
4 feeder offbearer. Tr. 28. Therefore, the ALJ concluded Plaintiff was not under a
5 disability, as defined in the Social Security Act, from the alleged onset date of
6 March 31, 2015, though the date of the decision. Tr. 29.

7 On November 27, 2018, the Appeals Council denied review of the ALJ's
8 decision, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for
9 purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).

10 ISSUES

11 Plaintiff seeks judicial review of the Commissioner's final decision denying
12 him disability insurance benefits under Title II and supplemental security income
13 benefits under Title XVI of the Social Security Act. He raises the following issues
14 for review:

- 15 1. Whether the ALJ properly discredited Plaintiff's symptom claims; and
- 16 2. Whether the ALJ properly weighed the medical opinion evidence.

17 ECF No. 14 at 2.

DISCUSSION

A. Plaintiff's Symptom Claims

Plaintiff faults the ALJ for failing to rely on clear and convincing reasons in discrediting his symptom claims. ECF No. 14 at 10-21; ECF No. 16 at 2-6. An ALJ engages in a two-step analysis to determine whether to discount a claimant's testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2. "First, the ALJ must determine whether there is objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted). "The claimant is not required to show that [the claimant's] impairment could reasonably be expected to cause the severity of the symptom [the claimant] has alleged; [the claimant] need only show that it could reasonably have caused some degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

Second, "[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations omitted). General findings are insufficient; rather, the ALJ must identify what symptom claims are being discounted and what evidence undermines these claims. *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Thomas v.*

1 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
2 explain why he or she discounted claimant’s symptom claims)). “The clear and
3 convincing [evidence] standard is the most demanding required in Social Security
4 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
5 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

6 Factors to be considered in evaluating the intensity, persistence, and limiting
7 effects of a claimant’s symptoms include: (1) daily activities; (2) the location,
8 duration, frequency, and intensity of pain or other symptoms; (3) factors that
9 precipitate and aggravate the symptoms; (4) the type, dosage, effectiveness, and
10 side effects of any medication an individual takes or has taken to alleviate pain or
11 other symptoms; (5) treatment, other than medication, an individual receives or has
12 received for relief of pain or other symptoms; (6) any measures other than
13 treatment an individual uses or has used to relieve pain or other symptoms; and (7)
14 any other factors concerning an individual’s functional limitations and restrictions
15 due to pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R.
16 §§ 404.1529(c), 416.929 (c). The ALJ is instructed to “consider all of the evidence
17 in an individual’s record,” “to determine how symptoms limit ability to perform
18 work-related activities.” SSR 16-3p, 2016 WL 1119029, at *2.

19 Here, the ALJ found that Plaintiff’s medically determinable impairments
20 could reasonably be expected to cause some of the alleged symptoms, but that his

1 statements concerning the intensity, persistence, and limiting effects of his
2 symptoms were not entirely consistent with the evidence in the record. Tr. 21.

3 *1. Inconsistent with Medical Evidence*

4 The ALJ found Plaintiff's symptom testimony was inconsistent with the
5 medical evidence. Tr. 21. An ALJ may not discredit a claimant's symptom
6 testimony and deny benefits solely because the degree of the symptoms alleged is
7 not supported by objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853,
8 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991);
9 *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989). However, the medical evidence
10 is a relevant factor in determining the severity of a claimant's pain and its disabling
11 effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2).
12 Minimal objective evidence is a factor which may be relied upon to discount a
13 claimant's testimony, although it may not be the only factor. *Burch v. Barnhart*,
14 400 F.3d 676, 680 (9th Cir. 2005).

15 As to his physical impairments, Plaintiff testified to having a disabling lower
16 back impairment and chronic pain radiating down his left leg. Tr. 21. He reported
17 that at times he could not get out of bed due to back pain, that his fingers would go
18 numb when lying on his back, that he could not lift heavy objects, and that he had
19 difficulty standing or walking for prolonged periods. Tr. 20, 256, 267-71. He
20 described a "deep aching mid to low lumbar pain that was intermittent but

1 occurring daily,” and “worse with twisting or turning of his lumbar spine.” Tr. 21.
2 The ALJ found these claims were inconsistent with Plaintiff’s unremarkable
3 imaging studies, Tr. 21; Tr. 340, 345 (June 2015 x-ray: lumbosacral spine in
4 normal alignment, good preservation of disc spaces, bodies, laminae, pedicles,
5 intact transverse processes, no abnormalities in the sacrum/sacroiliac joints); Tr.
6 356 (Feb. 2006 MRI: mild concentric bulging of L2-3 intervertebral disc, posterior
7 central/left paracentral disc herniation at L5-S1, tiny left paracentral disc
8 protrusion at L4-5, minimal concentric bulging at L2-3); Tr. 501 (Jan. 2017 exam:
9 “unremarkable,” vertebral bodies, discs, and neural arches intact and in normal
10 alignment), and unremarkable physical exams, which largely showed normal
11 physical functioning with some tenderness and a slight decrease in range of motion
12 (ROM). Tr. 21; Tr. 345-46 (June 2015 exam: lumbar spine tenderness with slight
13 decrease in ROM, negative for muscle spasms and straight leg raise; no radicular
14 findings; patient observed to walk 20 feet without aid, sit comfortably during
15 exam, rise from chair and get on/off exam table without aid, walk on heels and
16 toes, and perform tandem walk and full squat); Tr. 451-52 (Jan. 2017 exam:
17 limited active ROM in lumbar spine; no muscle spasms despite self-report of
18 limited mobility, limping, and tenderness). The ALJ noted Plaintiff did not report
19 sciatic or radicular numbness or weakness in his exams prior to his hearing. Tr.
20 21. Plaintiff argues the evidence cited was not “wholly” benign and emphasizes

1 that one exam showed compression of the S1 nerve root. ECF No. 14 at 21 (citing
2 Tr. 354 (Jan. 2006 exam: mild compression of the S1 nerve root with a marked
3 severity rating)). However, it appears that the note was based on an MRI
4 conducted in 2004, two years earlier. Tr. 353. Apart from this singular exam, the
5 record primarily consists of unremarkable imaging studies. Plaintiff also offers an
6 exam report indicating a positive straight leg raise and limping. ECF No. 14 at 21
7 (citing Tr. 429 (Jan. 2015 exam: positive straight leg test on right side, low back
8 pain, and limited ROM in neck/back)). Even acknowledging this evidence, the
9 ALJ's interpretation of the record as a whole was reasonable; he rationally
10 concluded that objective imaging and physical exams showed generally mild
11 results inconsistent with the degree of pain and limitation Plaintiff alleged.
12 Because the ALJ's interpretation is rational and supported by substantial evidence,
13 it will not be disturbed. *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th
14 Cir. 2008) (The Court must consider the ALJ's decision in the context of "the
15 entire record as a whole," and if the "evidence is susceptible to more than one
16 rational interpretation, the ALJ's decision should be upheld." (internal quotation
17 marks omitted)).

18 The ALJ also found the record contained only mild objective findings
19 regarding Plaintiff's diabetes. Tr. 21. He noted that, despite Plaintiff's
20 inconsistent management of the disease, Tr. 21; Tr. 346 (June 2015 exam showed

1 Plaintiff had not taken medication for two years); Tr. 364 (Oct. 2015 exam noted
2 Plaintiff did not moderate his diabetes with medication/diet), there was no
3 evidence of serious complications. Tr. 21; Tr. 346 (June 2015 exam: no
4 retinopathy or peripheral neuropathy). He noted Plaintiff's sole visit to the
5 emergency room for diabetes occurred because he ran out of medication. Tr. 21;
6 Tr. 373 (March 2016 exam: presented to ER to get a refill for metformin; no
7 polydipsia, polyuria, or dizziness indicated). Moreover, the ALJ noted Plaintiff
8 "does well" when he properly manages his medications, diet, and blood sugars. Tr.
9 21; Tr. 447 (exam noted diabetes "improving" while on medication). On this
10 record, the ALJ reasonably concluded the medical evidence did not support the
11 level of impairment Plaintiff alleged as a result of diabetes. ECF No. 10 at 21-22.

12 Finally, the ALJ found Plaintiff's allegations of disabling mental
13 impairments were inconsistent with his "generally unremarkable presentation and
14 mental status during appointments and evaluations." Tr. 22-23. While
15 acknowledging Plaintiff appeared anxious or depressed at times, the ALJ noted
16 most of Plaintiff's treatment providers observed normal psychological functioning.
17 Tr. 22. The record supports this conclusion. Tr. 367-68 (Oct. 2015 exam: normal
18 mood, speech, orientation, concentration, and ability to think abstractly; Plaintiff
19 was cooperative, arrived on time, made fair eye contact, and was casually attired
20 and groomed); Tr. 374 (March 2016 exam: normal orientation and mentation;

1 pleasant and cooperative mood/behavior); Tr. 421 (July 2017 exam: awake and
2 alert; normal behavior, mood, and affect); Tr. 452 (Jan. 2017 physical exam:
3 normal orientation; no suicidal ideation; Plaintiff presented with agitation/anxiety);
4 Tr. 465 (Nov. 2016 exam: normal and appropriate mood, affect, speech rate, tone,
5 and eye contact). Plaintiff argues that the record contained substantial abnormal
6 findings and that the findings relied upon by the ALJ were made at physical
7 treatment appointments where his psychological health exceeded the scope of the
8 providers' specialties. ECF No. 14 at 20. However, the ALJ's interpretation of the
9 record as a whole was not unreasonable; the majority of examinations over time
10 reported normal psychological functioning assessed by various treatment
11 providers, which the ALJ determined was inconsistent with Plaintiff's claims of
12 disabling mental impairments. The ALJ's conclusions are supported by substantial
13 evidence in the medical record.

14 2. *Work History*

15 Next, the ALJ found Plaintiff's work history was inconsistent with his
16 symptom testimony. Tr. 22. Working with an impairment supports a conclusion
17 that the impairment is not disabling. *See Drouin v. Sullivan*, 966 F.2d 1255, 1258
18 (9th Cir. 1992); *Gregory v. Bowen*, 844 F.2d 664, 667 (9th Cir. 1988) (finding
19 substantial evidence supported determination that claimant's back problems were
20 not disabling where her condition remained constant for several years and the

1 impairment had not prevented her from working during that time). The ALJ
2 determined Plaintiff's symptom testimony was undermined by evidence that he
3 had worked various exertional jobs in the past even after his longstanding
4 conditions were diagnosed. Tr. 22. The record supports this conclusion. *See* Tr.
5 447 (reported lower back pain started in 2005); Tr. 342 (reported back pain started
6 15 years with a sudden increase in symptoms in 2003); Tr. 343 (reported he was
7 diagnosed with diabetes at age 18 and started on oral agents around age 22); *see*
8 *also* Tr. 241-55 (work history from 2004 to 2011 included janitorial work, food
9 service, forklift operation, telemarketing, window screen installation, and
10 restocking supplies); Tr. 227 (earnings of more than \$10,000 each year from 2007-
11 2010). Likewise, the ALJ noted Plaintiff engaged in substantial gainful activity
12 despite his claim that he struggled with symptoms of his debilitating mental
13 impairments for many years prior to the alleged onset date. Tr. 22; Tr. 76-88 (prior
14 jobs included working in a warehouse, driving a forklift, and working for Yakima
15 Juice). Plaintiff contends both his physical and mental impairments worsened over
16 time. ECF No. 14 at 19. However, while there is evidence that Plaintiff self-
17 reported his physical symptoms had worsened, *see* Tr. 48, 88-89, 92-93, 97
18 (testified conditions worsened over time and since he began working); Tr. 271
19 (reported increased complications with diabetes and increased back pain); Tr. 342
20 (reported more frequent and severe back pain), the objective medical evidence

1 does not support the claim. For example, an MRI of Plaintiff's lumbar spine taken
2 in 2006 was unremarkable apart from mild concentric bulging, a "tiny" disc
3 protrusion, and a herniation at L5. Tr. 356. A second MRI of his lumbar and
4 cervical spine was ordered in 2017 after Plaintiff reported "sharp and shooting"
5 back pain radiating to his feet, decreased mobility, limping, numbness, and tingling
6 in his legs, Tr. 447; the 2017 MRI was unremarkable, finding "vertebral bodies,
7 discs, and neural arches appear intact and in normal alignment." Tr. 501. In
8 January 2017, despite his claim that his symptoms were worsening, Plaintiff's
9 doctor reported his diabetes was improving. Tr. 447. As to his mental
10 impairments, Plaintiff points only to self-reports to support his claim that his
11 symptoms worsened. ECF No. 14 at 19 (citing Tr. 89, 92-93). On balance, the
12 ALJ reasonably found Plaintiff's engagement in past exertional work, which
13 persisted during and after he claimed to have a sudden increase in symptoms, was
14 inconsistent with his testimony that his impairments prevent him from working.

15 Additionally, the ALJ noted the sporadic, temporary nature of Plaintiff's
16 work suggested that his lack of employment is unrelated to his impairments and
17 rather tied to "lifestyle choices" and/or substance abuse and incarceration. Tr. 24.
18 When considering a claimant's contention that he cannot work because of his
19 impairments, it is appropriate to consider whether the claimant has not worked for
20 reasons unrelated to his alleged disability. *Tommasetti v. Astrue*, 533 F.3d 1035,

1 1040 (9th Cir. 2008); *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001)
2 (sufficient reasons for disregarding subjective testimony include stopping work for
3 nonmedical reasons and failure to seek care for allegedly disabling condition at the
4 time claimant stopped work). Evidence of a poor work history that suggests a
5 claimant is not motivated to work is a permissible reason to discredit a claimant's
6 testimony that he is unable to work. *Thomas*, 278 F.3d at 959; SSR 96-7 (factors
7 to consider in evaluating credibility include "prior work record and efforts to
8 work"); *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996); 20 C.F.R. §
9 416.929(c)(3) (work record can be considered in assessing credibility). Here,
10 Plaintiff testified that most of his work was temporary in nature and ended when
11 the temporary work was completed. Tr. 76-77. He testified that he worked only
12 one permanent job but was fired two days later due to a dispute with a coworker.
13 Tr. 77-79. The ALJ's conclusion that Plaintiff's work ended for non-medical
14 reasons is reasonable and is supported by substantial evidence. Plaintiff's
15 argument that the ALJ engaged in improper speculation is unsupported by the
16 evidence the ALJ cited and relied upon. ECF No. 14 at 19. Moreover, even if the
17 ALJ erred in making this conclusion, any error would be harmless because the ALJ
18 lists additional reasons, supported by substantial evidence for discrediting
19 Plaintiff's symptom testimony. See *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533
20 F.3d 1155, 1162-63 (9th Cir. 2008); *Molina*, 674 F.3d at 1115 ("[S]everal of our

1 cases have held that an ALJ's error was harmless where the ALJ provided one or
2 more invalid reasons for disbelieving a claimant's testimony, but also provided
3 valid reasons that were supported by the record.'').

4 3. *Conservative Nature of Treatment*

5 Next, the ALJ found the alleged severity of Plaintiff's physical impairments
6 was inconsistent with the conservative treatment he elected. Tr. 22-23. The
7 medical treatment a claimant seeks to relieve his symptoms is a relevant factor in
8 evaluating the intensity and persistence of symptoms. 20 C.F.R. §§
9 416.929(c)(3)(iv), (v). When a claimant receives only conservative or minimal
10 treatment, it supports an adverse inference as to the claimant's credibility regarding
11 the severity of her subjective symptoms. *Parra v. Astrue*, 481 F.3d 742, 750-51
12 (9th Cir. 2007); *Meanal v. Apfel*, 172 F.3d 1111, 1114 (9th Cir. 1999). Here,
13 Plaintiff described disabling back pain but elected to manage it solely with
14 medications, despite higher-level treatment, including physical therapy and
15 injections, being advised. Tr. 447 (Jan. 2017 exam: failed to follow up with doctor
16 regarding imaging and physical therapy); Tr. 481 (Nov. 2015 exam: failed to
17 follow up with neurosurgeon and failed to pursue injections and physical therapy).
18 The ALJ noted that Plaintiff also reported he "rarely take[s] over-the-counter
19 Ibuprofen," and did not take prescription pain medication, which the ALJ found
20 further detracted from the credibility of his allegations of severe pain. Tr. 343.

1 The ALJ also observed Plaintiff had relatively infrequent and minimal treatment
2 for his diabetes. Tr. 373 (instructed to take one tablet of Metformin daily); Tr. 447
3 (exam noted diabetes was well-managed with diet, medications, and fingerstick
4 blood sugars). The ALJ concluded Plaintiff's "physical complaints were
5 inconsistent with the minimal, conservative treatment" he maintained. Tr. 22.
6 Plaintiff does not directly address this finding, but notes that he attempted physical
7 therapy and found it unhelpful, Tr. 483, and explains that he experienced adverse
8 reactions to some pain medications prescribed. Tr. 473 (exam noted naproxen was
9 "the most likely cause of your severe acid reflux and abdominal pain"). The ALJ's
10 conclusion is supported by substantial evidence in the record and constitutes a
11 clear and convincing reason to support an adverse credibility finding.

12 *4. Non-Compliance with Treatment Recommendations*

13 Similarly, the ALJ gave less weight to Plaintiff's symptom testimony due to
14 his non-compliance with recommended treatment. Tr. 22-23. An unexplained, or
15 inadequately explained, failure to seek treatment or follow a prescribed course of
16 treatment may be considered when evaluating the claimant's subjective symptoms.
17 *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007). Evidence of a claimant's self-
18 limitation and lack of motivation to seek treatment are appropriate considerations
19 in determining the credibility of a claimant's subjective symptom reports.

20 *Osenbrock v. Apfel*, 240 F.3d 1157, 1165-66 (9th Cir. 2001); *Bell-Shier v. Astrue*,

1 312 F. App'x 45, *3 (9th Cir. 2009) (unpublished opinion). When there is no
2 evidence suggesting the failure to seek or participate in treatment is attributable to
3 a mental impairment rather than a personal preference, it is reasonable for the ALJ
4 to conclude that the level or frequency of treatment is inconsistent with the alleged
5 severity of complaints. *Molina*, 674 F.3d at 1113-14. But when the evidence
6 suggests lack of mental health treatment is partly due to a claimant's mental health
7 condition, it may be inappropriate to consider a claimant's lack of mental health
8 treatment when evaluating the claimant's failure to participate in treatment.
9 *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996).

10 Here, the ALJ found Plaintiff was inexplicably non-compliant with his
11 treatment recommendations. Tr. 22-23. He identified several instances where
12 Plaintiff failed to follow treatment recommendations relating to his back. Tr. 22.
13 For example, he was referred to physical therapy and instructed to have an x-ray
14 performed on his back but failed to follow up. Tr. 447, 480. He also failed to
15 follow up on a referral to see a neurosurgeon or obtain injections. Tr. 481.
16 Plaintiff claims he tried physical therapy and it did not help; he cites to one exam
17 on June 10, 2015 where he reported, "he had physical therapy about 10 years ago
18 with minimal improvement at that time." ECF No. 14 at 13; Tr. 342. Nonetheless,
19 physical therapy was repeatedly recommended and it does not appear Plaintiff
20 attempted it again. Tr. 355, 361, 430, 446. Additional unpursued treatment

1 recommendations included: steroid injections, Tr. 351, neurological consults, Tr.
2 351, stretching and relaxation modalities, Tr. 355, 361, and light resistance
3 training, Tr. 361. Additionally, the ALJ noted Plaintiff did not take prescribed
4 medicines for pain and rarely took Ibuprofen. Tr. 22. Plaintiff claims the
5 medications had adverse side effects. ECF No. 14 at 13. However, while it is
6 clear that he was eventually instructed not to use nonsteroidal anti-inflammatory
7 drugs (NSAIDs), Tr. 473, it is unclear whether other pain medications were
8 advised. Plaintiff appears to have used other pain medications on occasion; on
9 March 29, 2016, after the appointment where he was instructed to discontinue
10 using NSAIDs, Tr. 473, Plaintiff requested pain medication, Tr. 468; on January 1,
11 2017, he reported his symptoms were relieved by pain medications, Tr. 447; he
12 was administered Norco and did not report any side effects, Tr. 384, 396, 399, 411,
13 419; and he reported no side effects from medications on January 3, 2017, Tr. 429.
14 As a result, it was reasonable for the ALJ to conclude that, because Plaintiff had
15 unjustifiably rejected recommendations including physical therapy and injections,
16 and because he rejected pain medications at times, his allegations as to the severity
17 of his impairments were less reliable. Tr. 22.

18 The ALJ also noted Plaintiff failed to take medication as directed for his
19 diabetes at times, despite his reports of improved symptoms with medication. Tr.
20 21 (citing Tr. 373, 446-47 (symptoms improved with medication); Tr. 453-54

(symptoms worsening; medication/education materials were not used as directed); Tr. 488 (noncompliant with medication and other instructions)). Plaintiff claims he stopped taking his medication because he believed it caused anxiety and because he experienced hypoglycemic episodes. ECF No. 14 at 13. The record shows his only reported hypoglycemic episode occurred while he was incarcerated and given insulin, which he normally does not take. Tr. 343. Moreover, it is not evident that metformin is related to Plaintiff's anxiety. Tr. 480-81 (Nov. 2015 exam: Plaintiff stopped taking metformin because it caused anxiety but was still experiencing anxiety and was taking other medication that may have increased anxiety). The ALJ's determination that Plaintiff's non-compliance with his diabetes medication detracted from his credibility is substantially supported by the record.

The ALJ found Plaintiff lacked an "adequate explanation for his failure to follow the course of prescribed treatment" and noted he had medical coverage through DSHS during the time various treatments were recommended. Tr. 22. Plaintiff contends the ALJ erred by failing to cite evidence supporting his conclusion and argues that "even with medical coverage, there are still barriers to treatment related to affordability that the ALJ didn't consider," including homelessness, lack of a driver's license and vehicle, and mental illness. ECF No. 14 at 11-12. However, Plaintiff failed to identify any evidence indicating he was unable to obtain services due to financial constraints and there are numerous

1 medical records indicating he was covered by insurance. *See* Tr. 369, 381, 393,
2 407, 417. Moreover, Plaintiff did not raise the issue of access to healthcare or
3 affordability of healthcare before the ALJ and the record indicates he was able to
4 access healthcare when needed: (1) he visited health care providers at least 19
5 times from 2005-2017, Tr. 340-509; (2) even without a driver's license, Tr. 45, he
6 indicated that he was able to get around by walking, biking, taking the bus, or
7 riding with his cousin, Tr. 50-51, 342, and demonstrated his ability to travel to
8 various work sites, Tr. 241-53; (3) while he approximated he had been homeless
9 from the summer of 2009, Tr. 212-15, to the summer of 2016,³ Tr. 62, he was able
10 to seek medical care numerous times during that period, Tr. 340-509; and (4) since
11 June 2016, he has had stable housing and continued to disregard treatment
12 recommendations, including taking medications as directed, trying physical
13 therapy, or following up with specialists. Tr. 460-61 (Nov. 2016 exam: reported
14 non-compliance with medication), Tr. 453-54 (Dec. 2016 exam: failed to take
15 medications for diabetes and failed to follow-up with nutritionist and behavioral

17 ³ The record is unclear as to when Plaintiff secured housing. At the hearing,
18 Plaintiff stated he had been living in the housing provided by The Depot since June
19 2016. Tr. 62. However, his briefing indicates he was living in a tent city until
20 November 2016. ECF No. 14 at 11-12.

1 health specialist); Tr. 446-47 (Jan. 2017 exam: recommended x-ray, physical
2 therapy, and meeting with a behavioral health specialist and a nutritionist; exam
3 noted Plaintiff failed to follow up with doctor regarding physical therapy, imaging,
4 and medication). Moreover, the record suggests he was able to attend
5 appointments before and after his mental impairments were diagnosed. Tr. 432
6 (assessing mild limitations in “ability to perform activities within a schedule,
7 maintain regular attendance and be punctual with customary tolerances;”) Tr. 52
8 (testified he takes a bus everyday to The Depot for meetings and/or counseling);
9 Tr. 260 (indicated an individual from The Depot reminds him of where he needs to
10 go); Tr. 258 (reported he does not need help or reminders taking medicine); *but see*
11 276 (reported he does need help remembering to take medicine). Rather, the ALJ
12 found Plaintiff did not follow his recommended course of mental treatment,
13 primarily due to issues of substance abuse. Tr. 23. The ALJ identified at least one
14 instance where Plaintiff was told to “seek complete abstinence.” Tr. 23 (citing Tr.
15 366). Plaintiff contends the single instance referenced is ambiguous as to whether
16 it was communicated to Plaintiff or merely written down.⁴ ECF No. 14 at 14. He
17 asserts that, even assuming the provider instructed him to seek abstinence, the

18
19 ⁴ Plaintiff was unambiguously told to stop using alcohol by a separate provider, Tr.
20 460, though this was not referenced by the ALJ and not addressed by either party.

evidence of non-compliance cited by the ALJ predated any such instruction. ECF No. 14 at 14. However, the ALJ cited to a record dated November 8, 2016,⁵ which occurred after the instruction was recorded on October 28, 2015, *see* Tr. 460-61; Tr. 363, and in which the physician recorded Plaintiff was:

managing [his] mood w/alcohol and occasional benzos off the street.
Drinks between two and five 40-oz beers, occasional hard liquor.
Last drink was at 10:00 this morning; reports he feels physical well at
present time, however if he goes more than a few hours into the
morning without a drink he develops withdrawal symptoms.

Tr. 461. The ALJ also cited a report from 2017 which indicated “the claimant is consuming alcohol daily.” Tr. 23; Tr. 450 (Jan. 2017 exam noted history of alcohol use and that Plaintiff consumed 40-oz of beer daily). Based on this record, the ALJ reasonably concluded Plaintiff’s noncompliance with treatment recommendations detracted from his credibility. *See Orn*, 495 F.3d at 638.

5. Daily Activities

The ALJ found Plaintiff’s reported activities were inconsistent with his alleged limitations. Tr. 24. A claimant’s daily activities may support an adverse credibility finding if: (1) the claimant’s activities contradict his other testimony; or (2) the claimant “is able to spend a substantial part of [his] day engaged in pursuits involving performance of physical functions that are transferable to a work

⁵ The record has two dates, November 8, 2016 and November 17, 2016. Tr. 460.

1 setting.” *Orn*, 495 F.3d at 639 (*citing Fair*, 885 F.2d at 603). It is reasonable for
2 an ALJ to consider a claimant’s activities which undermine claims of totally
3 disabling pain in making the credibility determination. *See Rollins*, 261 F.3d at
4 857. However, it is well-established that a claimant need not be “utterly
5 incapacitated” to be eligible for benefits. *Fair*, 885 F.2d at 603. In support of his
6 finding, the ALJ noted Plaintiff was able to shower, tend to personal hygiene, dress
7 himself, rise from a toilet, go grocery shopping, prepare meals, do dishes, clean his
8 house, and do his laundry. Tr. 23. He noted Plaintiff stated he could climb a full
9 flight of stairs with a railing, stand for an hour before needing a 10-minute break,
10 sit for over an hour, and comfortably lift 20-30 pounds. Tr. 23. He noted that
11 “despite [Plaintiff’s] allegations of social difficulties,” Plaintiff testified he spends
12 time with his cousin, has a good relationship with his mother, had a girlfriend for
13 five years, and communicates with his family by phone. Tr. 24. Additionally, he
14 noted that, while Plaintiff stated he could not walk distances or be around crowds
15 of people, he also testified that he routinely uses public transport, attends meetings
16 at The Depot (which are at times “packed”), and walks three blocks from his home
17 to catch the bus daily. Tr. 24; *see* Tr. 51-54 (walks a minimum of six blocks per
18 day to attend meetings and return home; number of people at The Depot can be
19 anywhere from 10 people to “stuffed packed”). The record elucidates the same
20 inconsistencies between Plaintiff’s statements and his alleged limitations. *See* Tr.

1 257 (cannot be around big crowds), Tr. 261 (can walk at most one block before
2 resting for 10-30 minutes); Tr. 277-78 (indicates walking/biking as forms of
3 transportation), Tr. (can walk four to six blocks and then needs to rest for 20
4 minutes); Tr. 280 (when he is around a lot of people he has panic attacks and gets
5 violent). The ALJ reasonably concluded that Plaintiff's reported daily activities
6 were inconsistent with the level of impairment he alleged. Tr. 23-24. This was a
7 clear and convincing reason to discredit his symptom testimony.

8 *6. Inconsistent Statements*

9 Finally, the ALJ found that several of Plaintiff's statements were
10 inconsistent with the record. Tr. 24-25. An ALJ may support an adverse
11 credibility finding by citing to inconsistencies in the claimant's testimony, prior
12 inconsistent statements, and general inconsistencies in the record. *Thomas*, 278
13 F.3d at 958-59 (inconsistencies in the claimant's testimony are properly
14 considered); *Tommasetti*, 533 F.3d at 1039. Here, the ALJ found Plaintiff's
15 testimony that he "experiences anger control problems" and is exceedingly prone
16 to physical assaults was inconsistent with the fact that "he has not assaulted anyone
17 since June 2016, since he obtained stable housing and began treatment/taking
18 medications." Tr. 25; *see* Tr. 58-60. Plaintiff argues that, while the ALJ's finding
19 is accurate, it does not account for the near-physical assault he alleged to have
20

1 occurred right before the hearing. ECF No. 14 at 19; Tr. 58-59 (reported he was
2 about to assault another person but was stopped by his cousin).

3 In addition, the ALJ found Plaintiff's statement that he had not had a valid
4 driver's license for 12 years was inconsistent with his testimony that he "knows
5 how to drive and does if necessary," and testimony that he drove his cousin's car
6 during an emergency. Tr. 24. However, these statements do not present an
7 obvious contradiction and should not contribute to a finding of adverse credibility.
8 Even if the ALJ erred in relying on these statements, any error is harmless because
9 the ALJ provided additional reasons supported by substantial evidence to give less
10 weight to Plaintiff's symptom complaints. *See Carmickle*, 533 F.3d at 1162-63.

11 Overall, the ALJ's credibility finding is supported by substantial evidence.

12 **B. Medical Opinion Evidence**

13 Plaintiff contends the ALJ improperly weighed the medical opinions of Dr.
14 Drenguis, Dr. Crank, Ms. An, Ms. Jones, and Dr. Cline. ECF No. 14 at 4-10.

15 There are three types of physicians: "(1) those who treat the claimant
16 (treating physicians); (2) those who examine but do not treat the claimant
17 (examining physicians); and (3) those who neither examine nor treat the claimant
18 [but who review the claimant's file] (nonexamining [or reviewing] physicians)."
19 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
20 Generally, a treating physician's opinion carries more weight than an examining

1 physician's, and an examining physician's opinion carries more weight than a
2 reviewing physician's. *Id.* at 1202. "In addition, the regulations give more weight
3 to opinions that are explained than to those that are not, and to the opinions of
4 specialists concerning matters relating to their specialty over that of
5 nonspecialists." *Id.* (citations omitted).

6 If a treating or examining physician's opinion is uncontradicted, the ALJ
7 may reject it only by offering "clear and convincing reasons that are supported by
8 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
9 "However, the ALJ need not accept the opinion of any physician, including a
10 treating physician, if that opinion is brief, conclusory and inadequately supported
11 by clinical findings." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
12 (9th Cir. 2009) (internal quotation marks and brackets omitted). "If a treating or
13 examining doctor's opinion is contradicted by another doctor's opinion, an ALJ
14 may only reject it by providing specific and legitimate reasons that are supported
15 by substantial evidence." *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-
16 831).

17 *1. William Drenguis, M.D.*

18 On June 10, 2015, Dr. Drenguis conducted a consultative physical
19 examination. Tr. 340-47. He diagnosed Plaintiff with chronic low back pain
20 manifested by "tenderness with a slight decrease in range of motion," history of

1 bilateral knee pain and right ankle instability (though he noted minimal current
2 findings), and history of diabetes. Tr. 346. As to Plaintiff's back, he observed no
3 muscle spasms, no radicular findings, and negative results on the straight leg
4 raising test; he opined the findings were "most consistent with a chronic lumbar
5 sprain." Tr. 346. He found no evidence of retinopathy or peripheral neuropathy
6 relating to Plaintiff's diabetes. Tr. 346. Based on his findings, Dr. Drenguis
7 determined Plaintiff could perform light work. Tr. 346.

8 The ALJ gave significant weight to Dr. Drenguis' opinion. Tr. 25. Plaintiff
9 contends that the ALJ erred in doing so and that more weight should have been
10 given to Dr. Crank's opinion. ECF No. 14 at 9. An ALJ may choose to give more
11 weight to an opinion that is more consistent with the evidence in the record. 20
12 C.F.R. §§ 404.1527(c)(4), 416.927(c)(4) ("[T]he more consistent a medical opinion
13 is with the record as a whole, the more weight we will give to that medical
14 opinion."); *Nguyen*, 100 F.3d at 1464. Relevant factors when evaluating a medical
15 opinion include the amount of relevant evidence that supports the opinion, the
16 quality of the explanation provided in the opinion, and the consistency of the
17 medical opinion with the record as a whole. *Lingenfelter v. Astrue*, 504 F.3d 1028,
18 1042 (9th Cir. 2007); *Orn*, 495 F.3d at 631; 20 C.F.R. § 416.927(c)(6) (assessing
19 the extent to which a medical source is "familiar with the other information in [the
20 claimant's] case record").

1 After reviewing the evaluations and opinions of Dr. Drenguis and Dr. Crank
2 and considering the entire record, the Court concludes the ALJ's weighing of these
3 two doctors' opinions is supported by substantial evidence. In weighing the
4 opinions, the ALJ first noted Dr. Drenguis' familiarity with social security
5 regulations and experience assessing the nature and severity of claimants'
6 conditions. Tr. 25. The ALJ may consider a medical provider's familiarity with
7 "disability programs and their evidentiary requirements" in evaluating a medical
8 opinion. *Orn*, 495 F.3d at 631. Next, the ALJ found that Dr. Drenguis' opinion,
9 and particularly his conclusion that Plaintiff was capable of performing light work
10 with frequent postural limitations, was consistent with treatment records and with
11 Plaintiff's reported daily activities, as discussed *supra*. Tr. 25 (citing Tr. 369-428,
12 436-511). Consistency with evidence in the record is a relevant factor to
13 evaluating a medical opinion. *Lingenfelter*, 504 F.3d at 1042; *Orn*, 495 F.3d at
14 631. The ALJ noted that Dr. Drenguis recognized and documented the lack of
15 objective evidence supporting some of Plaintiff's allegedly severe impairments, Tr.
16 25, which is evident from a review of Dr. Drenguis' diagnoses and prognoses. Tr.
17 345-46 (x-ray of lumbar spine was unremarkable, x-ray of left knee was
18 unremarkable, no muscle spasm, negative for straight leg raise, no radicular
19 findings, minimal current findings regarding historically reported knee pain and
20 ankle instability, no retinopathy or peripheral neuropathy related to diabetes). He

1 further noted that Dr. Drenguis was aware that Plaintiff had failed to treat his
2 diabetes with medication for two years. Tr. 25, 346. In contrast, as discussed
3 *infra*, the ALJ found Dr. Crank's opinion was unsupported by the record; he noted
4 Dr. Crank included a diagnosis for cervical degenerative disc disease where there
5 was no objective evidence to support it. Tr. 25. While Plaintiff suggests the ALJ
6 should have weighed the opinions of Dr. Crank and Dr. Drenguis differently, the
7 ALJ provided legally sufficient reasons for giving more weight to Dr. Drenguis'
8 opinion and less weight to Dr. Crank's opinion.

9 2. *Jeremiah Crank, M.D.*

10 On November 5, 2015, Dr. Crank performed a consultative physical exam.
11 Tr. 505-07. He found Plaintiff's impairments would limit him to sedentary work
12 (*i.e.*, able to lift 10 pounds maximum and frequently lift or carry lightweight
13 articles; able to walk or stand only for brief periods) due to neck and back pain
14 with radiculopathy/degenerative disc disease. Tr. 25, 507. He found Plaintiff's
15 neck and back pain would have a marked effect on his work activity and would
16 significantly interfere with "[his] ability to perform one or more basic work-related
17 activities." Tr. 506. The ALJ assigned little weight to this opinion. Tr. 25.
18 Because Dr. Crank's opinion was contradicted by Dr. Drenguis' opinion, the ALJ
19 was required to provide specific and legitimate reasons for rejecting Dr. Crank's
20 opinion. *Bayliss*, 427 F.3d at 1216.

1 The ALJ found Dr. Crank's opined limitations were unsupported by the
2 medical evidence. Tr. 25. An ALJ may reject limitations "unsupported by the
3 record as a whole." *Batson v. Comm'r Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th
4 Cir. 2003). The ALJ specifically noted Dr. Crank's diagnosis of "neck pain with
5 radiculopathy," Tr. 506, which supported his conclusion regarding sedentary work,
6 was inconsistent with treatment records indicating Plaintiff's neck was normal. Tr.
7 25 (citing Tr. 345, 465 (neck is normal); Tr. 412 (no ROM limitations; no pain or
8 rigidity); Tr. 421 (neck normal; no pain, no ROM limitations); Tr. 471 (negative
9 for neck pain); Tr. 500 (image of cervical region shows mild curvature of cervical
10 spine convex to the right, otherwise "unremarkable exam")). The ALJ's finding
11 was supported by substantial evidence and constitutes a specific and legitimate
12 reason to discredit Dr. Crank's opinion.

13 In addition, the ALJ noted the opinion was based on a one-time brief
14 examination for non-treatment purposes. Tr. 25. The number of visits a claimant
15 has made to a particular provider is a relevant factor in assigning weight to an
16 opinion. 20 C.F.R. § 416.927(c). However, the fact that an evaluator examined
17 Plaintiff one time is not a legally sufficient basis for rejecting the opinion. The
18 regulations direct that all opinions, including the opinions of examining providers,
19 should be considered. 20 C.F.R. § 416.927(b), (c). The Court notes the ALJ's
20 rationale is inconsistent with the great weight he gave to Dr. Drenguis, who

1 similarly had no treatment relationship with Plaintiff. This was not a specific and
2 legitimate reason to discount the opinion. Nonetheless, any error is harmless
3 because the ALJ provided an independently sufficient reason for rejecting Dr.
4 Drenguis' opinion. *See Tommasetti*, 533 F.3d at 1038.

5 3. *Sarah An, A.R.N.P.*

6 On January 3, 2017, Ms. An completed a report in which she diagnosed
7 Plaintiff with cervical radiculopathy/lumbar radiculopathy, 10 years uncontrolled
8 diabetes mellitus type II, and bipolar disorder. Tr. 429-31. She observed Plaintiff
9 had a positive straight leg test on the right side, limited ROM in his neck and back,
10 pain in his lower back on the right side, and walked with a limp. Tr. 429. She
11 opined regular and continuous work would cause his condition to deteriorate
12 because he "needs frequent rest as well as [sic] unable to lift objects at this time
13 patient needs to have diagnostic tests as well as non-pharmacologic treatment." Tr.
14 430. She concluded he would miss four or more days of employment per month.
15 Tr. 430. The ALJ gave little weight to Ms. An's opinion. Tr. 26. Because Ms. An
16 is not an acceptable medical source, the ALJ may reject her opinion by giving
17 reasons germane to the opinion. *Ghanim*, 763 F.3d at 1161.

18 The ALJ found Ms. An's absenteeism conclusion had "no basis in the
19 record," and was not supported by sufficient evidence. Tr 26. A medical opinion
20 may be rejected if it is conclusory or inadequately supported. *Bray*, 554 F.3d at

1 1228; *Thomas*, 278 F.3d at 957. When prompted to provide an explanation, Ms.
2 An solely wrote, “due to current condition.” Tr. 430. The ALJ reasonably
3 concluded that Ms’ An’s absenteeism conclusion lacked sufficient evidentiary
4 support and was inconsistent with the record. Tr. 26. Plaintiff contends Ms. An
5 supported the absenteeism conclusion by describing his symptoms (*i.e.*, limping
6 and a positive straight leg raise test) and by noting his “psychological impairments
7 and stress increased his perception of pain.” ECF No. 14 at 9. However, this
8 evidence fails to adequately explain the absenteeism finding and is not consistent
9 with the record as a whole, which indicates relatively normal psychological
10 functioning and gait. *See, e.g.*, Tr. 344 (normal gait and negative straight leg raise
11 test); Tr. 371, 387, 398 (steady gait and normal pace); Tr. 452 (balance and gait
12 normal); *but see* Tr. 349, 353, 359 (short stepping gait). Ms. An’s other treatment
13 notes also appear to be inconsistent with the instant report. *See* Tr. 492 (Aug.
14 2015: normal psychiatric findings); Tr. 459 (Dec. 2016; normal psychiatric
15 findings); Tr. 452 (Jan. 2017; normal balance, gait, and coordination, normal
16 psychiatric findings except for agitation and anxiety). Based on the lack of
17 explanation for the finding and the lack of support in the longitudinal record, the
18 ALJ’s finding is reasonable and supported by substantial evidence. This
19 constitutes a germane reason to reject Ms. An’s opinions. *See Bayliss*, 427 F.3d at
20

1 1218; *Lewis v. Apfel*, 236 F.3d 503, 511-12 (9th Cir. 2001) (germane reasons
2 include inconsistency with medical evidence, activities, and reports).

3 4. *Laurie Jones, M.S.M.F.T.*

4 Ms. Jones provided counseling services to Plaintiff since the alleged onset
5 date. Tr. 26, 98. On March 6, 2017, she completed a mental source statement in
6 which she reported mild to moderate limitations in all areas of mental functioning
7 except a marked limitation in the “the ability to get along with co-workers or peers
8 without distracting them or exhibiting behavioral extremes.” Tr. 432-35. She
9 opined Plaintiff would likely be off-task over 30% of the time during a 40-hour
10 work week and would likely miss four or more days of work per month. Tr. 434.
11 She indicated even a “minimal increase in mental demands or change in the
12 environment” could cause Plaintiff to decompensate. Tr. 434.

13 The ALJ gave significant weight to Ms. Jones’ findings of mild to moderate
14 limitations in all areas, but gave little to no weight to her conclusions that Plaintiff
15 would be off-task 30% of the time he was at work and would miss four or more
16 days of work per month. Tr. 26. Because Ms. Jones is a nonacceptable medical
17 source, the ALJ may reject her opinion by giving reasons germane to the opinion.
18 *Ghanim*, 763 F.3d at 1161.

19 First, the ALJ found Ms. Jones’ absenteeism and focus limitations were
20 unsupported by the record. Tr. 26. A medical opinion may be rejected if it is

1 unsupported by medical findings, *Bray*, 554 F.3d at 1228, or unsupported by the
2 record as a whole. *Batson*, 359 F.3d at 1195. Moreover, it is proper to read the
3 ALJ's decision as a whole in evaluating whether he considered the appropriate
4 factors in reaching his conclusion. *See Rice v. Barnhart*, 384 F.3d 363, 370 n.5
5 (7th Cir. 2004). Here, the ALJ found no basis in the record to conclude Plaintiff
6 would be absent at least four days per month due to his impairments. Tr. 26. The
7 record supports this conclusion. Apart from Ms. Jones' and Ms. An's findings,
8 which were both discredited by the ALJ, the record lacks evidence suggesting
9 Plaintiff struggled with absenteeism or with being substantially off-task. Plaintiff's
10 testimony suggests the opposite - he was able to maintain work as a forklift driver
11 for 12 hours per day, four days per week for six months. Tr. 79-88. The ALJ
12 previously evaluated this work activity, Tr. 22, 24, 26, and determined Plaintiff's
13 work was not lost due to his mental impairments, including absenteeism or off-task
14 work. Tr. 22, 24. He also noted Plaintiff's "allegations of disabling anxiety and
15 depressive symptoms" were inconsistent with his general presentation and the
16 objective evidence. Tr. 22. The ALJ's conclusion was reasonable based on the
17 lack of support in the record. This was a germane reason to discredit Ms. Jones'
18 opinions. *See Bayliss*, 427 F.3d at 1218.

19 Second, the ALJ found the absenteeism and focus limitations were less
20 credible because they were "based on the subjective report of limitations provided

1 by the claimant.” Tr. 26. A physician’s opinion may be rejected if it is based on a
2 claimant’s subjective complaints which were properly discounted. *Tonapetyan v.*
3 *Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001); *Morgan v. Comm’r of Soc. Sec.*
4 *Admin.*, 169 F.3d 595, 602 (9th Cir. 1999); *Fair*, 885 F.2d at 604. As discussed
5 *supra*, the ALJ found the record did not support the absenteeism and focus
6 limitations. Based on the lack of support in the record and the lack of explanation
7 by Ms. Jones, particularly where she assessed mostly mild and moderate
8 limitations otherwise, the ALJ reasonably concluded that the limitations were
9 based on Plaintiff’s self-reported symptoms, which he properly discredited. Tr. 26.
10 The ALJ’s conclusion was reasonably gleaned from the lack of evidence
11 supporting the alleged limitations and constitutes a germane reason to discredit Ms.
12 Jones’ opinion.

13 Plaintiff also contends the ALJ failed to fully incorporate Ms. Jones’
14 credited findings into the RFC. ECF No. 14 at 7-8. He argues the RFC fails to
15 allow for absenteeism (more than four days per month) based on Ms. Jones’
16 finding that there would be “interruptions from psychologically based symptoms”
17 at least 20% of the workday. ECF No. 14 at 7-8; Tr. 432-33. However, as
18 discussed above, the ALJ rejected Ms. Jones’ finding regarding absenteeism and
19 thereby was not required to incorporate it into the RFC. Plaintiff also argues the
20 RFC fails to incorporate special supervision in light of Ms. Jones’ moderate

1 limitation assessed in “sustain[ing] an ordinary routine without special
2 supervision,” ECF No. 14 at 7-8; Tr. 432. Ultimately, “the ALJ is responsible for
3 translating and incorporating clinical findings into a succinct RFC.” *Rounds v.*
4 *Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015). While Plaintiff
5 asserts that a specific allowance should have been made for “special supervision,”
6 ECF No. 14 at 8, such an allowance could be deemed to contravene Ms. Jones’
7 finding that Plaintiff suffers moderate limitations in accepting instructions and
8 responding appropriately to supervisors, which was also credited. Tr. 433. The
9 ALJ’s interpretation and incorporation into the RFC is rational. The RFC also
10 provides Plaintiff “is capable of engaging in unskilled, repetitive tasks in 2-hour
11 increments,” and that he “will be absent from work one time/month and be off task
12 at work up to 10% of the time but can still meet the minimum production
13 requirements of the job.” Tr. 20. These limitations address Ms. Jones’ opinions
14 that Plaintiff will experience interruptions from psychologically based symptoms,
15 will experience difficulty in maintaining concentration, persistence, or pace, and
16 will experience difficulty in responding to changes in the work setting. Tr. 433-34.

17 5. *Rebekah A. Cline, Psy. D.*

18 On October 28, 2015, Dr. Cline performed a psychological evaluation. Tr.
19 363-68. She diagnosed Plaintiff with PTSD, unspecified anxiety related disorder,
20 unspecified personality disorder (with features of borderline personality disorder),

1 and marijuana use disorder (marked, active). Tr. 365. Dr. Cline stated, “[he]
2 currently endorses symptoms consistent with a diagnosis of borderline personality
3 disorder. These are pervasive, and impact most every area of his life at this time;”
4 he “reports avoidance of public or crowded or small places, symptoms akin to
5 panic attacks when he has to be in such places and excessive worries that interfere
6 with accomplishing other tasks; he has “ongoing problems initiating sleep,” and
7 with “daytime fatigue;” and he appears to meet at least minimal criteria for a
8 diagnosis of PTSD. Tr. 364-65. Dr. Cline found marked limitations in Plaintiff’s
9 ability to communicate and perform effectively in a work setting, maintain
10 appropriate behavior at work, and complete a normal workday/week without
11 interruptions from psychologically based symptoms, but concluded the combined
12 impact of his mental impairments was moderately severe. Tr. 366. She indicated
13 the current impairments would persist following 60 days of sobriety but instructed
14 “[he] needs to seek complete abstinence in order to make the most of any
15 psychiatric intervention.” Tr. 366. Finally, she determined the impairments would
16 last 6-12 months, and recommended Plaintiff should be seeing a mental health
17 provider once every two weeks, as well as engaging in group therapy and
18 continued assessments. Tr. 366. The ALJ gave little to no weight to Dr. Cline’s
19 opinion. It does not appear that Dr. Cline’s opinion is contradictory to any other
20 source, nor does either party assert a contradiction. Thus, the Court assumes that

1 the ALJ was required to provide clear and convincing reasons to reject Dr. Cline's
2 opinion. *Bayliss*, 427.F.3d at 1216.

3 The ALJ gave little weight to Dr. Cline's opinion because she "included
4 symptoms, such as paranoia and auditory hallucinations, which are not supported
5 by [the] record as a whole." Tr. 26. An ALJ may discredit physicians' opinions
6 that are unsupported by the record as a whole. *Batson*, 359 F.3d at 1195.

7 Moreover, the extent to which a medical source is "familiar with the other
8 information in [the claimant's] case record" is relevant in assessing the weight of
9 that source's medical opinion. *See* 20 C.F.R. §§ 404.1527(c)(6), 416.927(c)(6).

10 Plaintiff contends the paranoia and hallucinations "are not isolated to this
11 evaluation," and are a "credit to [Dr. Cline's] findings," as they demonstrate that
12 she considered a "wider array of symptoms." ECF No. 14 at 6. However, no other
13 provider noted the presence of auditory hallucinations or paranoia and the reports
14 referenced by Plaintiff consist of his own self-reports (previously determined to be
15 unreliable by the ALJ) and a single exam noting hyper-vigilance. *See* ECF No. 14
16 at 6; Tr. 262, 280; Tr. 435 (diagnosis of PTSD, unable to work w/others,
17 hypervigilant, easily angered). While a different interpretation of the medical
18 evidence could be made, the ALJ's interpretation of the longitudinal record
19 regarding auditory hallucinations and paranoia is reasonable and supported by

1 substantial evidence. This was a clear and convincing reason to reject Dr. Cline's
2 opinion.

3 Additionally, the ALJ rejected Dr. Cline's opinion because she was
4 unfamiliar with Plaintiff's record and the "longitudinal picture of the claimant's
5 psychological impairments." Tr. 26. The extent to which a medical source is
6 "familiar with the other information in [the claimant's] case record" is relevant in
7 assessing the weight of that source's medical opinion. *See* 20 C.F.R. §
8 416.927(c)(6). Here, Dr. Cline indicated in her evaluation that she did not review
9 any medical records prior to the clinical interview. Tr. 363 (stating "N/A" under
10 records reviewed section). This was a clear and convincing reason to reject Dr.
11 Cline's opinion.

12 The ALJ also found Dr. Cline's opinion less credible because it was heavily
13 based on self-reports from Plaintiff. Tr. 27. A physician's opinion may be rejected
14 if it is based more heavily on a claimant's subjective complaints, which were
15 properly discounted, than on clinical observations. *Tonapetyan*, 242 F.3d at 1149;
16 *Ghanim*, 763 F.3d at 1162. Here, the ALJ concluded Dr. Cline's opinions were
17 more heavily based on Plaintiff's reported symptoms; he noted that Dr. Cline
18 indicated the evaluation was based on Plaintiff's self-reports and "information that
19 [was] made available;" that Dr. Cline did not have access to medical records; and
20 that she had not seen, evaluated, or treated Plaintiff prior to forming her opinions.

1 Tr. 26, 363. Because the ALJ previously discredited Plaintiff's symptom
2 testimony, he found Dr. Cline's opinions were not fully reliable. Tr. 26. This was
3 a clear and convincing reason, supported by substantial evidence, to reject Dr.
4 Cline's opinion.

5 Relatedly, the ALJ gave the opinion less weight because it was based on a
6 "one-time brief examination for non-treatment purposes." Tr. 26. The number of
7 visits a claimant has made to a particular provider is a relevant factor in assigning
8 weight to an opinion, 20 C.F.R. § 416.927(c), however, as the Court noted above,
9 this reasoning is inconsistent with the ALJ giving significant weight to Dr.
10 Drenguis' opinion. Consequently, this is not a clear and convincing reason to
11 reject Dr. Cline's opinion. However, any error is harmless where other clear and
12 convincing reasons were provided. *Tommasetti*, 533 F.3d at 1038.

13 The ALJ also rejected Dr. Cline's opinion because she "characterized the
14 claimant's marijuana use as 'marijuana use disorder, marked, active,' but failed to
15 explain how the condition impacts the opined limitations. Tr. 27. A medical
16 opinion may be rejected by the ALJ if it is conclusory or inadequately supported.
17 *Bray*, 554 F.3d at 1228. Plaintiff contends Dr. Cline "explicitly opined that his
18 limitations would persist with sobriety," and that even if marijuana use did
19 contribute to Plaintiff's impairments, that fact is irrelevant for the ALJ at this point
20 in his analysis. ECF No. 14 at 6. The report itself is unclear as to the import of the

1 finding on Dr. Cline's overall construction of the limitations. To the extent, if any,
2 that the ALJ erred by giving less weight to the opinion due to the unexplained
3 impact of marked and active marijuana use, the error is harmless because the ALJ
4 provided other clear and convincing reasons supported by substantial evidence to
5 reject the opinion. *Tommasetti*, 533 F.3d at 1038.

6 Finally, the ALJ discounted Dr. Cline's assessment because she opined that
7 Plaintiff's impairments would cause limitations for a six to 12-month period. Tr.
8 27; Tr. 366. Temporary limitations are not enough to meet the durational
9 requirement for a finding of disability. 20 C.F.R. § 416.905(a) (requiring a
10 claimant's impairment to be expected to last for a continuous period of not less
11 than twelve months); 42 U.S.C. § 423(d)(1)(A) (same); *Carmickle*, 533 F.3d at
12 1165 (affirming the ALJ's finding that treating physicians' short-term excuse from
13 work was not indicative of "claimant's long-term functioning"). To be disabled,
14 an impairment must be expected to last for a continuous period of at least twelve
15 months. *See* 20 C.F.R. §§ 404.1509, 416.909; *see also* 20 C.F.R. §§ 404.1505,
16 416.905. In this case, Dr. Cline opined that Plaintiff would be impaired with
17 available treatment for up to 12 months. Tr. 366. As a result, Dr. Cline's opinion
18 satisfied the disability durational requirement, and this was not a clear and
19 convincing reason to discredit Dr. Cline's opinion. However, such error is
20 harmless because the ALJ provided other clear and convincing reasons, supported

1 by substantial evidence, *see infra*, to discredit Dr. Cline's opinion. *Molina*, 674
2 F.3d at 1115. Plaintiff failed to show that the ALJ committed harmful error in
3 weighing the medical opinions and is not entitled to remand on this ground.

4 **CONCLUSION**

5 Having reviewed the record and the ALJ's findings, the Court concludes the
6 ALJ's decision is supported by substantial evidence and free of harmful legal error.
7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. The District Court Executive is directed to substitute Andrew M. Saul as
9 the Defendant and update the docket sheet.

10 2. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.

11 3. Defendant's Motion for Summary Judgment, **ECF No. 15**, is
12 **GRANTED**.

13 4. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

14 The District Court Executive is directed to file this Order, provide copies to
15 counsel, and **CLOSE THE FILE**.

16 DATED February 24, 2020.

17 s/Mary K. Dimke
18 MARY K. DIMKE
19 UNITED STATES MAGISTRATE JUDGE
20